

Thursday 31 May 2012

Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Chief Executive Officer of Customs v Toyota Material Handling Australia Pty Ltd - *Customs Tariff Act 1995* (Cth) - *Customs Act 1901* (Cth) - tariff on forklift trucks - tariff concession order - appeal allowed (B, C)

Garzo v Liverpool/Campbelltown Christian School - Personal injuries - fall while crossing a road within grounds of respondent school - appeal dismissed (I, C)

Khalid v Perpetual Ltd - ss57(2)(b) & 58A(1) *Real Property Act 1900* (NSW) - appeal dismissed (I, B)

Boland v Hoffmann & Ors - Personal injuries - negligence - duty of care (I, C)

Rural & General Insurance v Goldsmiths Lawyers - Costs assessment - *Legal Profession Act 2004* (NSW) (I, B, C, G)

In the matter of Rivercorp Pty Ltd - Costs (B)

Tenth Vandy Pty Ltd v Natwest Markets Australia Ltd; Thomas v Natwest Markets Australia Ltd - Commercial leases - costs - appeal dismissed (I, B)

Braudmont Pty Ltd & Ors v Gold Coast City Council - Subpoenas - *Sustainable Planning Act* 2009 (Qld) (C)

Trafalgar West Investments Pty Ltd v Superior Lawns Australia Pty Ltd [No 2] - *Corporations Act* 2001 (Cth) - substitution & joinder applications refused (I, B, C, G)

Alonso v SRS Investments (WA) Pty Ltd - Leases - guarantee & indemnity (B)

Clarence City Council v Howlin & Ors - *Local Government (Highways) Act* 1982 (Tas) - declaration that the relevant street not a highway & not maintainable by the Council pursuant to the Act (I, C)

Summaries with links (5 minute read)

Chief Executive Officer of Customs v Toyota Material Handling Australia Pty Ltd [2012] FCAFC 78

Full Court of the Federal Court of Australia

Finn, Gilmour & Perram JJ

Customs Tariff Act 1995 (Cth) - *Customs Act* 1901 (Cth) - operation of system of tariffs imposed on imported goods to protect local manufacturing industries - tariff on forklift trucks - customs value - tariff relief known as a tariff concession order (TCO) - appeal allowed - decision of Administrative Appeals Tribunal set aside - decision of applicant refusing first respondent's TCO application affirmed.

[Chief Executive Officer of Customs](#) (B, C)

Garzo v Liverpool/Campbelltown Christian School [2012] NSWCA 151

Court of Appeal of New South Wales

Basten & Meagher JJA, Tobias AJA

Personal injuries - appellant fell while crossing a road within grounds of respondent school - first respondent occupier - second respondent maintenance contractor - s5B *Civil Liability Act* 2002



(NSW) - risk of harm - paint used for pedestrian crossing - slip resistant standards for pedestrian crossings - expert evidence - foreseeability - failure to take reasonable precautions - at par 188 of judgment of Tobias AJA: appellant had succeeded in establishing breach of duty of care but had failed on issue of causation - appeal dismissed.

[Garzo](#) (I, C)

[Garzo](#) - decision Supreme Court of NSW 15 April 2011: see Benchmark I & IBC Tuesday 19 April 2011 - personal injuries - plaintiff attending concert at her childrens' school fell over and injured herself in the school grounds on a pedestrian crossing - foreseeability - causation - s5D *Civil Liability Act* 2002 - first defendant the proprietor of the school - second defendant the maintenance contractor for the school - defendants cross-claimed against each other - s5(1)(c) *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) - judgment for first & second defendants on plaintiff's claim - judgment for each cross-defendant on each of the cross-claims - although plaintiff did not succeed in her claim, assessment of damages made.

[Garzo](#) - decision Supreme Court of NSW 3 June 2011

Khalid v Perpetual Ltd [2012] NSWCA 153

Court of Appeal of New South Wales

Beazley & Whealy JJA, Tobias AJA

Ss57(2)(b) & 58A(1) *Real Property Act* 1900 (NSW) - loan contract - mortgage - whether default notice invalid - appeal dismissed.

[Khalid](#) (I, B)

[Perpetual](#) - decision Supreme Court of NSW 27 October 2011: see Benchmark; I, B & IBC Monday 31 October 2011 - loan contract - appeal from decision of Associate Judge ordering joinder of second defendant in proceedings for possession of land brought by plaintiff against first defendant & that a default judgment obtained by plaintiff against first defendant for possession of land be set aside - appeal allowed;

[Perpetual](#) - decision Supreme Court of NSW 18 August 2011: see Benchmark I, B & IBC Wednesday 24 August 2011 - joinder - applications by Mr. Khalid for joinder as second defendant & for default judgment for possession to be set aside - whether applicant has arguable defence - applications granted - "occupier."

Boland v Hoffmann & Ors [2012] NSWSC 571

Supreme Court of New South Wales

RS Hulme J

Personal injuries - negligence - duty of care - plaintiff then aged 6 months injured when being carried by first defendant who fell down some stairs in premises owned by eighth defendant - second defendant builder - expert evidence - case law from New Zealand & Australia considered - verdict for plaintiff against first defendant - verdict for second to seventh defendants against the plaintiff - verdict for cross defendant on each of five cross-claims.

[Boland](#)

**Rural & General Insurance v Goldsmiths Lawyers [2012] NSWSC 358**

Supreme Court of New South Wales

Hall J

Costs assessment - *Legal Profession Act* 2004 (NSW) - plaintiff seeking order in the nature of certiorari quashing decision of costs assessor & decision of a Review Panel and an order setting aside a Certificate of Costs of Review issued by the Review Panel - application granted.

[Rural & General Insurance](#) (I, B, C, G)

In the matter of Rivercorp Pty Ltd [2012] NSWSC 576

Supreme Court of New South Wales

Brereton J

Costs - first defendant Commissioner of Taxation to pay plaintiff's costs, such costs to be assessed on ordinary basis until and including day before date of plaintiff's Offer of Compromise, and thereafter on indemnity basis.

[Rivercorp](#) (B)

Tenth Vandy Pty Ltd v Natwest Markets Australia Ltd; Thomas v Natwest Markets Australia Ltd [2012] VSCA 103

Court of Appeal of Victoria

Nettle & Neave JJA, Bell AJA

Commercial leases - retail shopping centre lease - costs - appeal from judgment given in Commercial & Equity Division: respondent was lessor as mortgagee in possession and appellant lessee - also a related appeal against costs orders made personally against a director of appellant - appeal dismissed - Mr Thomas' application for leave to appeal against order that he should pay the respondent's costs of the proceeding refused.

[Tenth Vandy](#) (I, B)

[Tenth Vandy](#) - decision Supreme Court of Victoria 8 January 2010 - whether defendant had acted unconscionably or unconscientiously in exercising its legal right of re-entry - plaintiff's claim failed;

[Tenth Vandy](#) - decision Supreme Court of Victoria 12 March 2010 - cost

**Braudmont Pty Ltd & Ors v Gold Coast City Council [2012] QCA 140**

Court of Appeal of Queensland

Muir & Fraser JJA, Martin J

Sustainable Planning Act 2009 (Qld) - applicants seeking leave to appeal under s498(2) of against decision setting aside subpoena to Chief Executive Officer of respondent Council & ordering applicants pay costs in relation to setting aside - application for leave to appeal refused.

[Braudmont](#) (C)**Trafalgar West Investments Pty Ltd v Superior Lawns Australia Pty Ltd [No 2] [2012] WASC 169**

Supreme Court of Western Australia

Kenneth Martin J

Corporations Act 2001 (Cth) - 3 actions - person applying to be substituted as plaintiff, pursuant to *Supreme Court Rules* 1971 (WA) in lieu of the corporation; alternatively, application to be added as second plaintiff, with the company - requirements as to standing to validly commence a statutory oppression action - both the substitution & the joinder applications refused.

[Trafalgar West Investments](#) (I, B, C, G)**Alonso v SRS Investments (WA) Pty Ltd [2012] WASC 168**

Supreme Court of Western Australia

Edelman J

Leases - guarantee & indemnity - whether guarantee contained in lease was signed by the party to be charged therewith within meaning of s4 *Statute of Frauds* - second defendant pleading that guarantee not enforceable against her personally - second defendant liable under the guarantee to the plaintiff in the amount of \$71,990.10 - comprehensive consideration of UK & Australian case law.

[Alonso](#) (B)**Clarence City Council v Howlin & Ors [2012] TASSC 26**

Supreme Court of Tasmania

Evans J

Local Government (Highways) Act 1982 (Tas) - whether street in Opossum Bay was a highway and whether it was maintainable by plaintiff, pursuant to the Act - plaintiff seeking declarations that it was not, and firstnamed defendant seeking declarations to the opposite effect - declaration that the street not a highway & not maintainable by the Council pursuant to the Act.

[Clarence City Council](#) (I, C)

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